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No. 07-843

(3)

FILED
MAR 2 8 2008
OFFICE OF THE CLERK
SUPREME COURT, U.S.

In The

Supreme Court of the United States

JAMES DRAIN et ux.,

Petitioners,

v.

ACCREDITED HOME LENDERS, INC., et al.,

Respondents.

On Petition For Writ Of Certiorari To The United States Court of Appeals For The Tenth Circuit

PETITION FOR REHEARING

JAMES DRAIN AND
RACHEL DRAIN, PRO SE
1012 Stanton Place
Clovis, N.M. 88101
(505) 742-2690

QUESTIONS PRESENTED
PUBLIC INTEREST POLICY

POINT ONE:

WHETHER IT SERVES PUBLIC INTEREST IN A NATIONAL CRISIS TO ALLOW THE LENDING INSTITUTIONS WHO THROUGH PREDATORY LENDING PRACTICES CAUSED BORROWERS DEFAULT TO BENEFIT FROM ITS UNLAWFUL PRACTICES TO THE DETRIMENT OF BORROWERS AND THE SOCIETY?

The Court denied the Application for Writ of Certiorari on March 3, 2008. In the meantime, the unconscionable abuses by Lending institutions, such as the Respondents in this case, known as Predatory Lending and unlawful collection has reached a crisis level for the nation. It is a national crisis as evidenced by recent emergency interventions and assistance the Central Bank had to provide to keep the financial system from collapsing. In view of all the Lending abuses by Respondents, Petitioners the victims or their agent were blamed while the abusers walk away free, justice would have been denied when it was needed the most. For this reason this Court will find that the opportunity to act is now and therefore, grant Petitioners Petition For Rehearing.

QUESTIONS PRESENTED
PUBLIC INTEREST POLICY – Continued

POINT TWO:

WHERE PREDATORY LENDING PRACTICES LED TO WRONGFUL AND UNLAWFUL FORECLOSURE PROCEEDINGS SHOULD BORROWERS HAVE REASONABLE EXPECTATION THAT A COURT OF EQUITY WOULD ACT TO HOLD LENDING INSTITUTIONS RESPONSIBLE AND ACCOUNTABLE?

Petitioners petitioned the courts in the first instance pleading that the court enforce the laws to protect them from the predatory lending practices, but the predatory abuses never stopped.

Though the Original Complaint was for violations of the Truth in Lending Act (**TILA**); (**FDCPA**) Federal Debt Collection Practices Act and other federal consumer protection laws in the United States District Court for the District of New Mexico in April 12, 2004, Complaining of Respondents withholding mortgage payment, unlawfully imposing insurance coverage on their home though they have home owners coverage, Imposing late fees and penalties and withholding received mailed in payment for several days without posting it timely, thereby creating late payment charges fees and penalties, the predatory practices have not stopped there. The place of the abuses simple changed from the collection and computation to the tactics of their big gun lawyers.

QUESTIONS PRESENTED
PUBLIC INTEREST POLICY – Continued

The practice by these Lending institutions by litigation through employment of powerful law firms instead of making the necessary and simple correction and credits to home owners as required itself is predatory, and so long as they are able to frustrate the borrowers would continue to do so. The Court would find that for these reasons in view of the intervening events the Petition for rehearing should be granted to allow it to give direction where it is urgently needed.

LIST OF THE PARTIES

The parties below are listed in the caption and are listed together with their attorneys address as follows:

1. James Drain and Rachel Drain (wife) Plaintiffs Mike Bello, Esq. 2508 N. Prince # 255 Clovis, N.M. 88101 (505) 769-3100.

2. Wells Fargo Bank, Minnesota, N.A. as Trustee for ITLA Mortgage, Loan Securitization 2002-1, LLC Defendant

James J. Widland, Esq. and Dylan O'Reilly Esq. Miller Stratvert P.A. P.O. Box 25687 Albuquerque, N.M. 87125 (505) 842-1950

3. Fairbanks Capital Corp., Utah Defendant
James J. Widland, Esq. and Dylan O'Reilly Esq. Miller Stratvert P.A. P.O. Box 25687 Albuquerque, N.M. 87125 (505) 842-1950

4. Basmajian T. Doyle, Director Defendant
James J. Widland, Esq. and Dylan O'Reilly Esq. Miller Stratvert P.A. P.O. Box 25687 Albuquerque, N.M. 87125 (505) 842-1950

5. Accredited Home Lenders Inc., Defendant
William F. Davis, Esq. and Cynthia Tessman, Esq., P.O. Box 6 Albuquerque, N.M. 87102.

CORPORATE DISCLOSURE STATEMENTS

The corporate disclosure statements are applicable to the Defendants-Respondents, since, they are corporations and a director. Plaintiffs-Petitioner are individuals and without corporate affiliation and not a corporate entity.

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	i
LIST OF PARTIES	iv
CORPORATE DISCLOSURE STATEMENT	v
TABLE OF CONTENTS	vi
STATEMENT OF JURISDICTION	1
STATEMENT OF THE CASE	1
REASONS FOR GRANTING THE PETITION FOR REHEARING	2
CONCLUSION	7

TABLE OF AUTHORITIES

Page

STATUTORY REFERENCES

15 U.S.C. § 1692 (TILA) 4, 6

15 U.S.C. § 1692(k) (FDCPA) 4, 6

STATEMENT OF JURISDICTION

Pursuant to Supreme Court Rule 30.3 this Court has jurisdiction, and the Petition for Rehearing is filed timely today March 28, 2008 since the date of the order denying application was March 3, 2008 in accordance with Rule 44.

This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

STATEMENT OF THE CASE

Petitioners bought their house sometime in 1999 after putting his retirement fund for down payment, close to half the cost of the house in order to carry a low mortgage payment.

Through sales and acquisitions and assignments, Accredited Home Lender the original lender sold to Wells Fargo who employs Fairbanks to service the loan. Sometime in 2002, Fairbanks by the use of unlawful tactics, raised our mortgage payments, added penalties and other charges, imposed additional insurance even though we had coverage and then declared our loan in default and started foreclosure. Upon several complaints, including ours the FTC investigated and found that the complaints are true and obtained a federal court stipulated order that Respondents correct all the wrongful charges and remove all the penalties on all borrower's loans

which are still in foreclosure, which we are, and declare them current.

But they did not. Therefore we filed this suit on April 12, 2004 by and through our attorney, who represented us through the courts below. Instead of making the corrections, they are ordered to do by the federal court Respondents employed several law firms and dragged us ragged and is still dragging us.

We are still in the house while all our efforts to have them correct the errors so we can refinance and pay the actual balance we owed have been defeated by their high power lawyers using one low blow tactic after another. Why should they make any corrections? The District Court threw our case out with prejudice. (Record already before this Court).

REASONS FOR GRANTING THE PETITION FOR REHEARING

The intervening events which have reached the level of national crisis and may affect not just the nation but several nations due to the callous predatory lending practices of Lending institutions including Respondents warrants this Court attention and guidance, therefore for these reasons and for public interest the Petition for Rehearing should be granted.

I. WHETHER IT SERVES PUBLIC INTEREST IN A NATIONAL CRISIS TO ALLOW THE LENDING INSTITUTIONS WHO THROUGH PREDATORY LENDING PRACTICES CAUSED BORROWERS DEFAULT TO BENEFIT FROM ITS UNLAWFUL PRACTICES TO THE DETRIMENT OF BORROWERS AND THE SOCIETY?

It evidently is now a national crisis declared in the recent emergency interventions and assistance speech by the Central Bank Chairman. It urgently had to provide immediate money to these institutions to keep the financial system from collapsing.

In view of all the Lending abuses by Respondents, Petitioners the victims or their agent were blamed while the abusers walked away free – is that justice? No, it is not. That would be justice denied when it was needed the most.

The Treasury secretary, Henry Paulson. and our Federal Central Bank chairman have come out and bailed out these same lending institutions with our tax payers money frequently so lately that it begs the question what about the victims, us the home owner borrower. Secretary, Paulson said it well when he said that it was not the lack of regulations that led to the crisis, instead it was lack of enforcements. Why should the Lending institution care?

If they can afford paying law firms to send five lawyers to court over several months, spend a large amount to avoid correcting a ten thousand dollar

error in a mortgage payment unlawful charges they must have known they will get free government bail out for this situation. Finally, due to several situations like this it caught up with them and several borrowers are defaulting at an alarming scale. Our government bailed them out with our tax payers money.

Who is looking out for the borrowers to help them save their homes and limit the greediness of these lenders?

Petitioners are not mortgage speculators or traders. They are ordinary American home owners. It is for people like us that the court have always timely intervened and here also it is hoped that it seized the opportunity to render justice where others have used mere language and blame game to avoid delivering justice to those that it is due.

We admit we may not understand the language of lawyers, but so are many of us are ordinary American home owners. We are fathers, mothers, community leaders as well and we know what is happening to us.

Though Petitioners paid these whole retirement money as down payment for the house in 1999, by 2002, Respondents had found ways through unlawful tactics (these facts already are before this court under violation of the **TILA & FDCPA**), to keep increasing the mortgage balance, charge additional fees and penalties and unlawfully declared the loan in default in order that they could make more profit to the detriment of Petitioners.

These wrongful practices are what led to the sub prime lending crisis this nation now faces.

These unlawful practices are worsened by the fact that though the Lenders victimized borrowers to start with, they victimized them again if the borrowers sued. As in this case, after they put you in this situation and you demand that they make the corrections of their errors as Congress already provided for in the Acts, instead they employ the services of powerful and influential law firms who would play every God forbidden trick in the world attacking those sympathetic people that step up to help the borrower along the way as well, in order to win for the lenders at all cost.

Petitioners pray that this Petition for Rehearing is granted and this Court hold these predatory Lenders accountable, thereby rendering justice to the borrower and not stand by, while the abuses complained of since about 2002, which have now reached a proportion far reaching and turned into a national crisis that is being swept under the rug.

II. WHERE PREDATORY LENDING PRACTICES LED TO WRONGFUL AND UNLAWFUL FORECLOSURE PROCEEDINGS SHOULD BORROWERS HAVE REASONABLE EXPECTATION THAT A COURT OF EQUITY WOULD ACT TO HOLD LENDING INSTITUTIONS RESPONSIBLE AND ACCOUNTABLE?

Petitioners petitioned the courts in the first instance pleading that the court enforce the laws to

protect them from the predatory lending practices, but the predatory abuses never stopped.

Though the Original Complaint was for violations of the Truth in Lending Act (**TILA**); (**FDCPA**) Federal Debt Collection Practices Act and other federal consumer protection laws in the United States District Court for the District of New Mexico in April 12, 2004, Complaining of Respondents withholding mortgage payments, unlawfully imposing insurance coverage on their home though they have home owners coverage, imposing late fees and penalties and withholding received mailed-in payments for several days without posting it timely. Thereby, creating late payment charges, fees and penalties the predatory practices did not stop there. The place of the abuses simple changed from the collection and computation to the tactics of their big gun lawyers.

The public is wondering and the other arms of government are asking where is the relief for the borrower? Is there any justice for the borrower? Where Congress has done its part by providing these consumer protection Acts and the federal bank is rescuing the predators who would come to the borrower's rescue and save them from losing their homes?

The practices by these Lending institutions using litigation through employment of powerful law firms to victimize the borrower instead of making the necessary and simple correction and credits to home owners as required, itself is predatory. So long as they

are able to frustrate the borrowers they would continue to do so. The Court would find that for these reasons in view of the intervening events the Petition for Rehearing should be granted to allow it to give direction where it is urgently needed.

CONCLUSION

For the foregoing reasons, Petitioners' Petition for Rehearing should be granted.

Respectfully submitted,

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CERTIFICATE OF COUNSEL

I hereby certify that this Petition for Rehearing is submitted in good faith and not for delay. This Petition for Rehearing is restricted to the grounds set out in Rule 44.2.

JAMES DRAIN AND RACHEL DRAIN, PRO SE